

Supreme Court, U.S.
FILED

OCT 22 1986

JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-98

IN THE SUPREME COURT OF
THE UNITED STATES

JEAN MARIE MINNICH

VS.

GREGORY L. RIVERA

BRIEF IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI TO THE SUPREME
COURT OF PENNSYLVANIA

Mary Louise Barton
Assistant District Attorney

Attorney For Jean Marie Minnich

Office of the District Attorney
Lancaster County Courthouse
50 North Duke Street
Lancaster, Pennsylvania 17602
(717) 299-8100

6 PP

TABLE OF CONTENTS

	<u>PAGE</u>
Argument	1-3
Conclusion	3

TABLE OF CITATIONS

CASES

<u>Commonwealth v. Mikulan</u> , 504 Pa. 244 , 470 A.2d 1339 (1983)	2
<u>Corra v. Coll</u> , 305 Pa. Super. 179, 451 A.2d 480	2
<u>Little v. Streater</u> , 452 U.S. 1, 68 L.Ed. 627, 101 S.Ct. 2202 (1981) ..	2
<u>Matthews v. Elridge</u> , 424 U.S. 319, 47 L.Ed. 18, 96 S.Ct. 893 (1976) ..	3
<u>Tosto v. Pennsylvania Nursing Home Loan Agency</u> , 460 Pa. 1, 331 A.2d 198 (1975)	1

STATUTES

42 Pa.C.S.A. Section 6704	2
42 Pa.C.S.A. Section 6704(d)	1

OTHER SOURCES & OTHER MATERIALS

Pennsylvania Civil Procedure Support Law, Act No. 1978-46, P.L. 106, amended 1982, effective June 27, 1978	1
Pennsylvania Rules of Civil Procedure as to Actions for Support, Rule 1910.1 et seq.	2

ARGUMENT

Pennsylvania's paternity statute is not unconstitutional as violative of due process for two (2) reasons:

1. The Pennsylvania Legislature, along with at least 40 other state legislatures across the United States, has clearly expressed the intent of the Legislature in the Pennsylvania Civil Procedure Support Law, Act No. 1978-46, P.L. 106, amended 1982, effective June 27, 1978, to make the determination of paternity purely a civil action, including specifying the burden of proof as the preponderance of evidence. 42 Pa.C.S.A., Section 6704(d). Courts may refuse to enforce a statute only if it "clearly, palpably, and plainly" violates the Constitution.

Tosto v. Pennsylvania Nursing Home

Loan Agency, 460 Pa. 1, 331 A.2d 198 (1975). There is a strong presumption

of constitutionality and a heavy burden of persuasion upon one who challenges the constitutionality of an act of the legislature. Commonwealth v. Mikulan, 504 Pa. 244, 470 A.2d 1339, 1340 (1983).

2. The putative father in a paternity proceeding is guaranteed representation of counsel, Corra v. Coll, 305 Pa. Super. 179, 451 A.2d 480; blood test groupings, Little v. Streater, 452 U.S. 1, 68 L.Ed. 627, 101 S.Ct. 2202 (1981); a trial with jury, 42 Pa.C.S.A., Section 6704; plus, all the rules set forth in the Rules of Civil Procedure as to Actions for Support, Rule 1910.1 et seq. These guarantees provide the putative father with the fundamental requirement of due process: the right to be heard at a meaningful time in a meaningful

manner. Matthews v. Elridge, 424 U.S. 319, 47 L.Ed. 18, 96 S.Ct. 893 (1976).

CONCLUSION

The Respondent respectfully requests that Your Honorable Court dismiss the appeal from the Supreme Court of Pennsylvania on the grounds that the writ of certiorari does not present a substantial federal question and that the judgment rests on an adequate non-federal basis.

Respectfully submitted,

Mary Louise Barton
Assistant District Attorney

Attorney For Respondent
Jean Marie Minnich